



Maine Municipal Association

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January 5, 2006

Sue Inches, Deputy Director
Maine State Planning Office
38 State House Station
Augusta, Maine 04333

Dear Sue,

Please accept this letter as the comments of the five municipal city/town managers that served on the Solid Waste Management Policy Review Task Force ("Task Force"). The five town managers ("Managers") are:

Peggy Daigle – Old Town
Susan Lessard – Hampden
Steve Dyer – Oakland
Barry Tibbetts – Kennebunk
Stefan Pakulski – Readfield

It is our understanding that the State Planning Office (SPO) will present a draft report to the Task Force some time in January. If appropriate, the Managers may submit another set of comments following the release of the draft report.

This letter is meant to convey the suggestions of the Managers on some general consensus matters. However, some waste management issues raised by the Task Force are of particular concern to one town or another. Accordingly, individual Managers may submit comments as well.

One of the central purposes of the plan is to "provide guidance and direction to municipalities in planning and implementing waste management and recycling programs." (38 MRSA 2122.) As City/Town Managers, the plan is largely directed at us. We hope the following comments from your primary target audience are helpful.

1. Managers Support The Task Force And the Waste Management Plan

Managers appreciate the Legislature's recognition of the need to convene a "broad-based task force" to provide input on the development of the state's waste management policy. The 2005 Task Force was certainly broad-based and well-attended by the stakeholders. Managers congratulate SPO on its inclusive outreach.

The statute which establishes the Task Force states that it should meet "no less than every five years." The previous Task Force last met in 1999 – six years ago. The most recent Waste Management Plan is dated June, 1998. Assuming that the next plan is not completed until June 2006, there will have been an eight year gap between the last plan and the next plan.

We can not honestly say that the municipal community views the 1998 Waste Management Plan, largely developed using 1995-1997 data, as providing meaningful guidance. However, municipalities believe the plan is needed and would like to see it become a more relevant and useful policy document.

While additional meetings are rarely appealing, the Managers believe that convening the Task Force more frequently than once every five years and updating the Plan more than once every 7-8 years would improve the development of waste management policy in Maine.

There are three primary benefits to meeting more frequently. First, the plan will be viewed as a more useful guidance document if the data and analysis upon which it is built is actually relevant to the present. Second, market and economic changes generally occur on a 3-4 year cycle and the plan must keep up with the market. Lastly, environmental concerns drive much of the state's waste management policy and important state and federal regulatory changes concerning the environment occur every year.

Recommendation 1: The Managers recommend that SPO adopt a policy to convene the Task Force every 3 years and no later than every 4 years and that SPO update the plan every four years and no less than every five years. ←

2. The Task Force Process Was Good But Could Be Better.

Managers don't believe there is one perfect way to operate a stakeholder process. The process used by SPO in connection with the 2005 Task Force included a lot of positive aspects. However, there were some surprising omissions.

On a positive note, the pre-meeting assessment was a very good idea. It allowed the participants to freely and comfortably raise whatever issues were on their minds. One did not feel constrained to simply discuss issues that past Task Forces had reviewed. It gave the process a freshness that is often lacking in stakeholder groups.

A second positive aspect of the process was the use of sub-groups. The Task Force was big enough that this could be done in such a way as to include all the different perspectives in each sub-group. SPO should be able to easily spot issues if each of the three sub-groups raised similar problems or proposed similar solutions.

There are three primary criticisms with the process. First, we were surprised that the previous 5-year plan (the 1998 Waste Management Plan) was almost never referred to during the process. The 1998 Waste Management Plan recommended a series of action items. It would have been helpful to get a sense of what items had been pursued and which had not. Of those that had, which worked and which did not.

Furthermore, a review would have allowed us to use our Task Force time more wisely. While the pre-task force assessment was good, it did not prevent the 2005 Task

Force from raising many of the same topics, problems and solutions as those discussed in the 1998 Waste Management Plan. We could have greatly focused our efforts if we had a better sense of what from the 1998 Waste Management Plan was working and what was not. The above change could have allowed us to be more efficient.

Recommendation 2: The Managers recommend that a realistic assessment of previous Plan action items be undertaken. The assessment should either be conducted by SPO prior to the convening of a Task Force, or, it should be part of the assignment given to the Task Force.

The second primary criticism with the process is that data was lacking. The Task Force was asked to discuss various issues without having been provided even the most basic data. We were given three pages of notes from the pre-meeting assessment interviews and several pages of statute, but no summary data.

The second meeting of the Task Force focused on disposal capacity. However, no clear disposal data was provided. A good summary of the disposal data since 1998 (amount of capacity added, rate of disposal, the composition of the disposed materials, existing capacity of individual landfills and incinerators) would have been very helpful.

Also, no data on disposal costs were provided. A key element of deciding whether there is a “need” for additional disposal capacity is cost. What are tipping fees around the state? Instead of reviewing cost data, the subgroups simply sat around and stated that economic considerations should be included in disposal capacity decisions. We could have used that information.

SPO has most of this information and could have provided 1-2 page handouts. Some of us read the three 20-30 page biennial Disposal Capacity reports issued since 1998 but it was almost impossible to keep that volume of data close at hand. A 1-2 page summary of the main data points would have been very helpful.

In fact, the number one issue (overwhelmingly) identified by the Task Force participants following the Second Meeting’s morning discussion on disposal capacity was: “Do we need additional capacity?” (Meeting Two – Notes & Summaries, p. 4.) Existing capacity data and tipping fees were crucial to an intelligent discussion of this question.

Recommendation 3: The Managers recommend that SPO provide summary data for the various topics that are discussed by the Task Force and not simply refer the group to existing reports.

3. It Is Not Clear Who Is In Charge of Maine’s Waste Management Policy?

The State Planning Office is assigned the task of developing Maine’s Waste Management Plan. Yet, most of the State government’s legislative and regulatory waste management action is directed by the Department of Environmental Protection (“DEP”). It is unclear how SPO’s Management Plan influences DEP’s management. In other

words, how does one know if a statutory change or rule change proposed by DEP is consistent with the State's waste management policy?

A very important recent episode highlights this issue. This November and December, while the Task Force was meeting, the DEP was in the process of formal rulemaking. The topic of the rulemaking was the beneficial use of construction and demolition debris (CDD) as a fuel in biomass boilers. The public comment before the Board of Environmental Protection drew a very large crowd and the issue is of great importance to many people in Maine.

The use of CDD in biomass plants is routinely discussed in various SPO policy reports. The existing 1998 Waste Management Plan states, "*As long as the use of waste wood (including demo debris) is considered a beneficial use, the state should: encourage municipalities to sort and store waste properly for more effective processing; encourage municipalities to have their wood processed for energy producing facilities which operate with air emission controls.*" (1998 Waste Management Plan, p. 41). SPO's 2003 Disposal Capacity Report reaffirms this policy position "*Recommendation: that the Office continues promotion of appropriate recovery methods and systems for these [CDD] waste items. Growing demand within the biomass industry for processed CDD wood will also assist in creating a market for this product.*" (2003 Disposal Capacity Report, p. 30).

Yet, when the public comment was taken, SPO was silent as to whether the DEP proposal was consistent with state waste management policy. SPO attended the public hearing before the Board of Environmental Protection but provided no guidance to the Board and the public as to whether DEP's plan would fulfill or undermine state policy. Did DEP strike the right balance or not?

The disposal of CDD has been consistently identified in various SPO documents as a problem. In fact, the 2005 Task Force reiterated this issue. What is the point of working so hard to develop policy statements regarding the use of CDD wood in biomass boilers if the policy is either so vague as to be meaningless or is clear but is not going to be raised or even identified during the single most important regulatory action on this issue in a decade?

We identify the recent CDD rulemaking merely as an illustration of a broader problem regarding a lack of clarity as to how the state itself uses the Plan. Other examples exist as well.

Who sets state waste management policy DEP or SPO? SPO seems to write policy statements and DEP seems to take action. Whither the two shall meet?

Recommendation 4: SPO's Waste Management Plan should include enough specificity so that policy makers and interested parties can tell if future state action, including DEP regulation, is consistent with the plan or not. Vague generalities will not serve the statutory purpose of the plan which is to be a guide for municipalities.

4. The Following Items Are Of Greatest Municipal Concern

A. Clarification of How Towns Interact With the State When the State is the Owner of a Waste Management Facility.

While most municipalities will never be a Host community, it is a dominant aspect of life for those that are. The existing management scheme, from regulatory enforcement of environmental protection laws, to negotiating and enforcing host benefit agreements, was developed within a framework where the facility is owned by a private entity.

The state's purchase of the West Old Town Landfill and transfer of management to a private entity introduces a great deal of uncertainty regarding the existing management scheme. The municipal community is unified in believing that more clarity is needed.

Many people believe that the so-call hybrid model of state ownership and private operation spawned by the West Old Town Landfill experience will be replicated in the future. Lessons learned from West Old Town should lead to clarifying statutory and/or regulatory changes.

B. More Clarity on CDD Issues Is Needed.

The disposal of CDD is an issue and has been for years. Some members of the Board of Environmental Protection made fairly strong comments regarding the beneficial use of CDD during recent meetings. Some members believe CDD should never be used as a fuel in biomass facilities. Some would like to see the regulatory burdens for managing CDD so cumbersome that it is a disincentive to the importation of CDD from other states. The State's policy on this issue must be much more clear.

Additionally, Maine is one of the only (if not the only) state to include CDD waste in its recycling rate calculation. The primary purpose of the recycling rate calculation is as a policy-development tool. When discussed before the Legislature, recycling is generally discussed in the residential context. That is, policy recommendations frequently target the residential disposer (mandatory recycling, "pay as you throw" programs etc.). Yet, these programs do nothing to address CDD, which is really a commercial waste that is never handled by the typical resident.

Maine's recycling rate, excluding CDD, is around 39%. (According to SPO, a national organization calculates Maine's recycling rate without CDD at 49% - best in the country.) Maine's recycling rate of CDD is 16%. These are rather dramatic differences in recycling rates.

CDD is physically distinct from other wastes, is managed apart from other wastes, has a very distinct recycling rate from other wastes and raises unique management and

recycling challenges and options. Maine's public and its policy makers should be given a more clear picture of recycling – of both residential and CDD waste. A good first step toward clarity would be for Maine to abandon this senseless and nationally unique inclusion of CDD in its recycling rate calculations.

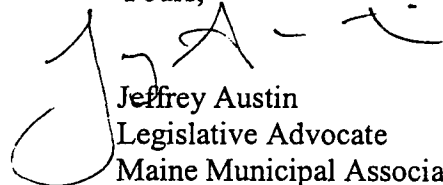
Further, the State needs to clarify its extremely vague policy position on the use of CDD wood in biomass boilers.

C. Other Issues

Municipal officials are also very interested in several other issues such as the process for identifying products to be banned from the normal waste stream, the regulation and costs associated with those bans; continued public education efforts; and, more information on recyclable materials (e.g. markets, dealers etc.).

Summary

The Waste Management Task Force is an important group and the state's Waste Management Plan is a vital public policy document. We appreciate our inclusion in the process. We believe the Task Force process and the Plan are each good but could be improved. Thank you for accepting these comments and please feel free to contact any of us with questions or concerns.

Yours,

Jeffrey Austin
Legislative Advocate
Maine Municipal Association

These comments are endorsed by:

Peggy Daigle, Town Manager, Old Town

Susan Lessard, Town Manager, Hampden

Steve Dyer, Town Manager, Oakland

Barry Tibbetts, Town Manager, Kennebunk

Stefan Pakulski, Town Manager, Readfield

Cc: Jeff Edelstein, Facilitator, 2005 Task Force
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